HON'BLE SRI JUSTICE A. GOPAL REDDY
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION No.26358 OF 2007

DATE: 24.12.2007

Between:
N.S. Raj Kumar

..... PETITIONER

AND

The Director General of Police,
Andhra Pradesh, Hyderabad
& 5 others.

.....RESPONDENTS

HON'BLE SRI JUSTICE A. GOPAL REDDY
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT PETITION No.26358 OF 2007

ORDER: (Per Hon'ble Sri Justice A.Gopal Reddy)

The petitioner filed this writ petition under Article 227 of Constitution of India for issuance of a writ of habeas corpus alleging that he married to one Smt. Sridevi @ Prameela, D/o. P.Krishnaiah, resident of Chennai as per Hindu Rites and Customs and during their wedlock, they were blessed with two children viz., Kumari Bhavani, aged about 8 years and Sri Acthyath, aged about 6 years. They lived happily for about 8 years after the marriage. In August, 2005, his mother-in-law took his wife along with children and since then, his wife has been living with her parents at Chennai. His wife is earning a

sum of Rs.4,000/- per month and he used to visit Chennai to see his wife and children and she used to complain against her mother's attitude and asked him to leave the place at the earliest before seeing her family members. Hoping that the things will be settled, he did not choose to lodge any complaint with the police, but from July, 2007 onwards, he has not seen his wife and when he made enquiries at his mother-in-law's house, he was informed that his wife died and was threatened not to visit Chennai again. When he rushed to the Vadapalani Police Station to lodge a complaint, the police refused to interfere with the matter stating that it is a matrimonial dispute. Since all his efforts to know about his wife are in vain he filed the present writ for production of his wife.

The Station House Officer, Tirupati, 4th respondent herein filed a counter stating that on his enquiry the petitioner's mother and sister, who are residing with him at Kummarathopu, Tirupati stated that the petitioner's mother-in-law took his wife and children along with her to Madras to provide medical aid to his wife. Initially, the petitioner also visited his wife now and then and for the last one and half years, he left Tirupati and residing at Chennai and since then, he has not visited Tirupati. Even according to the petitioner, he lodged a complaint with the police at Vadapalani, Chennai, but not with the police of Andhra Pradesh.

The Apex Court in **Mohd. Ikram Hussain v. State of U.P.** (AIR 1964 SC 1625) at para 13 held that:

> "13. Exigence of the writ at the instance of a husband is very rare in English Law, and in India the writ of habeas corpus is probably never used by a husband to regain his wife and the alternative remedy under S. 100 of the Code of Criminal Procedure is always used. Then there is the remedy of a Civil suit for restitution of conjugal rights. Husbands take recourse to the

latter when the detention does not amount to an offence and to the former if it does. In both these remedies all the issues of fact can be tried and the writ of habeas corpus is probably not demanded in similar cases if issues of fact have first to be established. This is because the writ of habeas corpus is festinum remedium and the power can only be exercised in a clear case……"

In view of the fact that the petitioner will have an alternative remedy to move the competent Civil Court for restitution of conjugal rights and also for custody of his children and also remedy under Section 100 Cr.P.C., the Writ Petition cannot be entertained and the same is accordingly dismissed at the admission stage. No costs.

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A. GOPAL REDDY, J.

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24th DECEMBER, 2007 G. BHAVANI

PRASAD, J.

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